IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 618 of 2001
(Old No. 2013 of 1989)

Date of decision :-14.06.2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-14.06.2007 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 618 of 2001
(Old No. 2013 of 1989)

1. Hari Singh S/o Dan Singh
2. Inder Singh S/o Dan Singh
Both R/o Bera (Maliyani)
Patti Rawal, P.S. Kotwali
District Pithoragarh ...Appellants

Versus

State ... Respondent

Delivery of Judgment : 14th June, 2007

Mrs. Pushpa Joshi, Advocate for the appellants.
Mr. G.S. Sandhu, Govt. Advocate for the respondent-State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This Criminal Appeal has been directed against the judgment and order dated 26.08.1989 passed by Shri M. L. Singhal, the then Sessions Judge, Pithoragarh in S.T. No.30/1988 State Vs. Hari Singh & another, whereby the appellant-Hari Singh was convicted and sentenced to undergo imprisonment for life and for six years under section 302 & section 307 IPC respectively. The appellant-Inder Singh was convicted and sentenced to undergo imprisonment of life and for six years under section 302/34 IPC and section 307/34 IPC respectively. Both sentences were to run concurrently.

2. The facts, in nutshell, are that Hari Singh and Inder Singh (appellants) are the cousins of Laxman Singh-informant and Kundal Singh-deceased. Mohan Singh PW2 is the real uncle of appellants (Hari Singh & Inder Singh), Laxman Singh PW1 and Kundal Singh-

deceased. The family of the appellants-accused were not having good relations with the families of Kundal Singh (deceased) and Laxman Singh PW1. They were not even on visiting and talking terms for the past six to seven years from the date of incident. The appellants-accused devoured the land of the family of the deceased-Kundal Singh. Laxman Singh PW1 - brother of the deceased was employed in the Army while the appellants-accused were unemployed. The appellants-accused have developed jealousy with the family of the deceased. On 18.05.1989 the marriage procession of one-Prahlad Singh was going from Beda village to village Sirmoda-near Gyradevi. In the said marriage procession, the appellants (Hari Singh & Inder Singh), the deceased-Kundal Singh, Laxman Singh PW1, Mohan Singh PW2 and Gopal Singh PW3 were present alongwith other guests (*'Baraties'*). At about 9:30pm when the marriage party (Barat) was going on the way to Gurna from Gyaradevi, the procession came to a halt and few 'Baraties' started dancing. There were 4-5 gas lanterns in the procession. One-Khim Singh persisted to continue the dance there. Mohan Singh PW2 – real uncle of the appellants, informant and Kundal Singh deceased asked him to discontinue the dance and to proceed further as it was getting late. Both Khim Singh and Mohan Singh PW2 joined over this issue and the exchange of hot words took place between them. The deceased Kundal Singh also appeared there and tried to intervene in the matter. Kundal Singh asked them to stop the dance and to proceed further. In the meantime, the appellants Hari Singh and Inder Singh also appeared there and pressed

for continuance of the dance and challenged as to who was going to stop them. Laxman Singh PW1 also told them for discontinuance of the dance as the '*Baraat*' was already getting late. Laxman Singh also told them that they were causing unnecessary delay in the '*Baraat*'. On this, Inder Singh got enraged with Laxman Singh PW1 and slapped on his face. In order to save him, Kundal Singh(deceased) appeared there and asked Inder Singh as to why he was beating his brother. Thereafter, the appellant Hari Singh took out a knife and gave knife blows to Kundal Singh. Consequently, he fell on the ground. When Laxman Singh PW1 came forward to rescue him, the appellant Inder Singh caught hold of Laxman Singh from behind and exhorted the appellant Hari Singh to kill him. On this, the appellant Hari Singh tried to give a knife blow in the stomach of Laxman Singh, but he turned around and the knife struck at his hip. Thereafter, the appellants Hari Singh and Inder Singh fled away from there. Immediately after the occurrence, Mohan Singh PW2, Gopal Singh PW3 and other villagers took the injured persons Kundal Singh and Laxman Singh PW1 to the District hospital, Pithoragarh for medical treatment. Kundal Singh was seriously injured and his condition was precarious. He succumbed to his injuries on the same night at 11:45pm in the hospital. A written FIR Ex.ka.1 was lodged by the injured Laxman Singh PW1 on the same night at 12:15P.M. On the basis of written report Ex.ka.1, a Chick F.I.R Ex.Ka.13 was prepared and necessary entry was made in the general diary Ex.Ka14. S.I.–Shyam Lal PW6, Investigating Officer started the investigation and sent

the dead body for postmortem. The I.O. prepared the site plan. He also recorded the statement of the witnesses. After completing the investigation, the Investigating Officer submitted the chargesheet before the court.

3. After submission of chargesheet the appellants-accused were committed to the court of Sessions for trial and the trial court framed charges against the accused persons. They denied the charges levelled against them and claimed their trial.

4. The prosecution in support of its case examined as many as six witnesses. Laxman Singh PW1 – informant is the cousin brother of the appellants-accused. He is an injured eye-witness of the incident. Mohan Singh PW2 is the real uncle of appellants, deceased and informant. He is equally related to both parties and he is eye-witness of the incident. Gopal Singh PW3 is also eye-witness of the incident. Gopal Singh PW3 is the resident of the same village i.e. Bera. His testimony does not show that he is, in any way, inimical with the prosecution party. Dr. Harish Chandra Pathak PW4 is the Medical Officer, who conducted the postmortem of the dead body of the deceased. Dr. M. D. Bhatt PW5 was the Medical Officer, District Hospital. He had given the medical treatment to the injured Kundal Singh in the hospital. He also examined the injured Kundal Singh before admission to the hospital and he also examined the injuries of Laxman Singh PW1. S.I.-Shyam Lal PW6 is the Investigating Officer of this case.

After completing the investigation, he submitted the chargesheet Ex.Ka.21. The appellants-accused did not adduce any evidence in their defence.

5. The accused persons were examined u/s 313 Cr.P.C. and they have pleaded not guilty to the offence. They have stated that they have been falsely implicated in this case.

6. The learned Sessions Judge on appreciation of the evidence held the appellants guilty and convicted and sentenced them as mentioned above.

7. We have heard Mrs. Pushpa Joshi, learned counsel for the appellants and Mr. G.S. Sandhu, learned Government Advocate for the respondent-State. Perused the record carefully.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Kundal Singh died on account of the injuries sustained by him on the date of occurrence. Kundal Singh was hospitalized in the injured condition and he was medically examined in the intervening night of 18/19.05.1987 at 10:20pm by Dr. M.D. Bhatt PW5, who found following injuries on the person of the injured-Kundal Singh:-

(i) Incised wound over caccygeal region 3cm above from tip of coccyx (right) size 2 x 5cm x 3cm deep. Profuse bleeding present. Margin clear cut.

(ii) Incised wound over hip 16cm below and medial from left iliac-crest size 3 x 1.5cm x 3cm deep. Elliptical in shape. Margins clean cut. Profuse bleeding present.

(iii) Incised wound over middle of right arm (inner side) size 2 x 0.5cm, skin deep, margins clean cut. 3cm above from right elbow. Profuse bleeding present.

(iv) General condition of the patient was very-very poor. Pulse feeble.

In the opinion of Dr. M. D. Bhatt, Medical Officer, the injuries were caused by sharp edged weapon and the injuries were fresh. It was further opined that the injuries might have been caused on 18.05.1987 at about 9:30pm.

9. The prosecution has also adduced the evidence of Dr. Harish Chandra Pathak PW4, who conducted the postmortem of the deceased-Kundal Singh on 19.05.1987 at 2:05am. Dr. Harish Chandra Pathak PW4 has found following ante-mortem injuries on the person of the deceased-Kundal Singh:-

(i) An Incised wound over back of middle upper arm (right). It is muscle deep 2 x 1 x 1cm in size, direction towards down and outer surrounding arm blood stained.

(ii) An incised wound on left middle gluteal region, size 3.8 x 1 x 7cm, direction from above downwards and medically on opening it is bone deep. Bone is fractured at base. Wound is full of clotted blood. It is stitched. Surrounding stained with blood.

(iii) An incised wound 2 x 0.6 x 4cm in size, on opening wound it is muscle deep. It is situated over right lower back 5cm above gluteal left. It starts 1.5cm from midline & is directed down & out. It is stitched. Both lower limbs are stained with blood due to injuries 2nd and 3rd wound bandage.

10. In the opinion of Dr. Harish Chandra Pathak, Medical Officer, the death was caused due to shock, execessive bleeding and coma resulting from the ante-mortem injuries sustained by the deceased. The Medical Officer has also opined that the deceased could have sustained the injuries on 18.05.1987 at about 9:30pm. It was further opined that if the proper medical facility would have been available in the hospital the deceased could have survived. Thus, it is amply established that deceased-Kundal Singh met a homicidal death on account of injuries sustained by him.

11. It is also established that the injured Laxman Singh PW1 has also sustained injury on his person on the date of occurrence. He was medically treated and examined at 11:05pm on the date of incident by Dr. M. D. Bhatt PW5, who found following injury on his person:-

(i) Incised wound over left hip 12 cm below and medial shape. Profuse bleeding present.

In the opinion of Dr. M. D. Bhatt PW5, the injury sustained by Laxman Singh PW1 was simple in nature and it might have been caused by sharp edged weapon.

12. It is admitted case of the parties that the appellants-accused are cousins of the deceased-Kundul Singh and the injured-Laxman Singh PW1. The appellants-accused had admitted in their statement recorded under section 313 Cr.P.C. that a quarrel took

place between Mohan Singh PW2 and Khim Singh over the continuance of dance in the marriage procession. They have further admitted that the complainant party and the appellants were on inimical terms with each other before the incident. There is no dispute about the presence of the appellants-accused, deceased Kundul Singh, Laxman Singh-injured, Mohan Singh and other villagers in the marriage procession. It is also admitted that the dance was going on in the marriage procession. The defence has tried to put a case by way of suggestion before the trial court that there was a quarrel between Mohan Singh and Khim Singh. The deceased and Laxman Singh supported the stand of their uncle Mohan Singh. On seeing the quarrel, the invitees of the marriage party assemble there and tried to intervene in the matter. Some unknown persons taking advantage of darkness assaulted and inflicted injuries on the person of the deceased and Laxman Singh. Thus, it is admitted that the occurrence took place when the procession of the marriage party was going on. Thus, the presence of appellants, deceased-Kundal Singh, injured-Laxman Singh PW1, Mohan Singh PW2 and Gopal Singh PW3 is admitted and the incident is admitted to the parties.

13. Now, we have to consider whether the appellants-accused were responsible for causing injuries to the injured and the deceased. The prosecution had adduced the evidence of the injured eye-witness Laxman Singh PW1. He has narrated the entire incident as mentioned above. Mohan Singh PW2 and Gopal Singh PW3 both the eye-witnesses have

corroborated the evidence of Laxman Singh PW1. The injured eye-witness Laxman Singh PW1 has lodged the report of the incident. Gopal Singh PW3 has scribed the report on the dictation of Laxman Singh PW1. All the eye-witnesses have fully supported the prosecution version. They were cross examined at length, but nothing could be elicited in their cross examination to discredit their testimony. All the eye-witnesses remained consistent in their cross examination with regard to the factum of incident. Moreover, the presence of the injured eye-witness Laxman Singh PW1 cannot be doubted. He has sustained injury in the same incident and the prosecution has proved the same. The injured witness stands on a higher pedestal than ordinary eye witness. It is also well settled that the testimony of the injured is sufficient to base the conviction and no further corroboration is required. His testimony is credible and cogent. The presence of the injured witness cannot be ruled out. The testimony of an injured witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony that the witnesses were present during the occurrence. {Vide **Narendra Nath Khaware Vs. Parasnath Khaware and others 2003 SCC (Crl) 1144 and State of U.P. Vs. Kishan Chand and others 2004 SCC (Cri) 2013}.**

14. Learned counsel for the appellants contended that the prosecution has not produced the independent witnesses to corroborate the fact of incident. It was further contended that it has come in the evidence that

there were other guests (‘*Baraties*’) in the marriage party and they saw the incident, but they were not produced before the court. It was further contended that the injured eye-witness of the prosecution namely, Laxman Singh PW1 is real brother of the deceased-Kundal Singh and Mohan Singh PW2 is uncle of the deceased and the appellants. Gopal Singh PW3 also belongs to the same village i.e. Bera. It was further contended that Laxman Singh PW1, Mohan Singh PW2 and Gopal Singh PW3, who are said to be the eye-witnesses of the incident, are interested witnesses as they are related to the deceased. It was contended on behalf of the appellants that the prosecution should have adduced the evidence of independent witnesses who were also present at the time of incident. Learned G.A. refuted the contention. On due consideration of the submissions of the learned counsel for the parties, we are of the view that although, it is true that Laxman Singh PW1 and Mohan Singh PW2 are related to the deceased and Gopal Singh PW3 belongs to the same village, but the evidence of injured eye-witness and other witnesses cannot be discarded on this ground alone. There is no rule of law or prudence which requires that the evidence of a close relation must be discarded for the simple reason i.e. they are related to each other. By now, it is well settled principle of law that animosity is a double-edged sword. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the facts and

circumstances of the present case, they are but natural witnesses of the incident. We have no reason to disbelieve their testimony. Similarly, being relatives, it would be their endeavour to see that the real culprits are punished and normally they would not implicate wrong persons in the crime, so as to allow the real culprits to escape unpunished. In the case of **State of Punjab Vs. Karnail Singh** reported in **2004 SCC (Cri) p/135** the Hon'ble Apex Court has held as under :-

> *"8. We may also observe that the ground that the witnesses being close relatives and consequently, being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh v. State of Punjab reported in AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J., it was observed: (AIR p. 366:-*
>
> > *25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rameshwar v. State of Rajasthan reported in AIR 1952 SC 54 (AIR at p. 59). We find, however, that it unfortunately still persists, if not in*

the judgments of the courts, at any rate in the arguments of counsel."

9. Again in Masalti v. State of U.P. AIR 1965 SC 202 this Court observed:-

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

15. So far as the contention that no independent witness was produced is concerned, the prosecution has adduced the evidence of Gopal Singh PW3, who is the resident of the same village. His testimony does not show that he is in any way inimical with the accused persons or closely affiliated with the prosecution party. Moreover, Mohan Singh PW2, who is said to be the real uncle of the deceased, is also real uncle of the accused persons. He is equally related to both parties. It is not always necessary to multiply the evidence of the incident on the same point. It has to be quality of the evidence and not the quantity, which is required. If the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy then increase in the number of witnesses cannot be the requirement of the case. Moreover, it has now almost become a fashion that the public is

reluctant to appear and depose before the court especially in criminal cases because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the witnesses avoid to come to the court. The evidence of prosecution witnesses is consistent and nothing had been elicited from their cross examination which may render their evidence unreliable. The evidence of the prosecution witnesses is credible and cogent.

In view of the above discussions, we do not find any force in the contentions advanced by the learned counsel for the appellants.

16. Learned counsel for the appellants further contended that the prosecution has failed to establish that there was any source of light at the spot. The incident took place at about 9:30pm and the prosecution has not given the source of light for the identification of the appellants. It was further pointed out that it was a dark night and the appellants could not have been recognized in the dark night, as such the appellants are entitled to be acquitted on this score alone. It was further contended that the source of light has not been indicated in the FIR as well as in the statement recorded under section 161 CrPC. Learned G.A. refuted the contention. Laxman Singh PW1, Mohan Singh PW2 and Gopal Singh PW3 had consistently stated in their evidence that the marriage procession of one-Prahlad Singh was going from the

village Beda to the village Sirmoda on foot. There were 4-5 gas lanterns in the marriage party at the time of occurrence. The appellants-accused had stated that the 'Baraties' (invitees) were dancing in the marriage procession. Therefore, it would be improbable that they were dancing in the marriage procession in the dark night. Apart from this, it is admitted that appellants-accused were known to Laxman Singh PW1, Mohan Singh PW2 and Gopal Singh PW3 since before. It is also significant that the appellants-accused can be recognized by their voice also. This is not a case where the identifying witnesses had only fleeting glimpses of the accused. The parties are known to each other and as such there was no chance of making a mistake about their identity. Thus, there is no reason at all for holding that there were no gas lanterns in the marriage procession and the appellants could not be identified by the prosecution witnesses. Therefore, the contention advanced by the defence is not tenable.

17. Learned counsel for the appellants contended that there was a delay in lodging the FIR. It was further contended on behalf of the appellants that the delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the Fir not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. Learned G.A. refuted the contention. The incident took place at about 9:30pm on 18.05.1987. Laxman Singh PW1, who was present at the scene of occurrence, promptly reported the matter to the police at 12:15 am in the

intervening night of 18/19.05.1987. The distance between the police station and the place of incident is about 11kms. The circumstances itself speak that the delay in lodging the FIR was under compelling circumstances. The deceased was admitted in the hospital at about 10:12pm and his condition was precarious. He was struggling for his life and the entire family of the deceased was busy in looking after the injured-Kundal Singh. In view of the precarious conditions of the injured, the informant and other relatives must have concentrated more in looking after the injured (deceased) than in lodging the FIR. It is natural that they would first try to save the life of the injured and then they would lodge the report. Thus, there is no delay in lodging the FIR. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them as also the names of the eye witnesses, if any.

18. It was contended on behalf of the appellant-Inder Singh that according to the prosecution case there was a quarrel between Khem Singh and Mohan Singh PW2 for the discontinuance of dance in the marriage party. The appellants Hari Singh and Inder Singh also came there and they also insisted to continue the dance and

they also challenged as to who was going to stop it. Laxman Singh PW1 requested them again for the discontinuance of dance as they were getting late. Inder Singh slapped Laxman Singh and the deceased Kundal came to his rescue. On seeing this, the appellant Hari Singh took out a knife and gave three knife blows to the deceased Kundal Singh. As a result of knife blows, the deceased fell on the ground. When Laxman Singh PW1 came there to save Kundal Singh the appellant Inder Singh caught hold of Laxman Singh from behind and exhorted Hari Singh to give him knife blows. Thereupon, the appellant Hari Singh with an intention to kill him and tried to give a knife blow in his stomach, but Laxman Singh turned around and sustained a knife blow on his hip. It was further contended that the appellant-Inder Singh was convicted under section 302/34 & 307/34 IPC. It was further pointed out that so far as appellant Inder Singh is concerned, his conviction under section 302 IPC with the aid of section 34 IPC is not justified in the facts and circumstances of the case. Learned G.A. had supported the judgment of the trial court and contended that the appellant-Inder Singh had participated in the commission of offence and such the trial court had rightly convicted him under section 302/34 IPC & 307/34 IPC. To attract the provisions of section 34 IPC two postulates are indispensable. (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person, (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all

such persons. To attract the applicability of section 34 IPC the prosecution is under obligation to establish that there existed a common intention which requires a prearranged plan, because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case. In the case in hand, the prosecution has led the evidence that the appellant Inder Singh slapped Laxman Singh. He had not participated in the crime or exhorted to Hari Singh to give knife blows on the deceased. He only caught hold of Laxman Singh from behind and exhorted him to cause fatal blow on the person of Laxman Singh. Thus, the participation of Inder Singh while causing injuries by knife blows to Kundal Singh (deceased) is not proved. He did not participate in giving knife blows to Kundal Singh. There is nothing in the evidence to show that due to instigation of Inder Singh, Hari Singh gave knife blows on the person of the deceased. Therefore, no inference can be drawn that the appellant Inder Singh had a common intention of causing death of the

deceased or that he actually participated in that criminal act. Hence, the conviction of Inder Singh under section 302/34 I.P.C. is liable to be set aside.

19. It was further contended that from the facts and circumstances of the case no offence under section 302 IPC is made out against the appellant Hari Singh. It was further contended that at the most even if the evidence was found credible against him, the offence punishable under section 304 part-II IPC is only made out against the appellant Hari Singh. The learned G.A. refuted the contention. The pivotal plea taken by the appellants relates to the applicability of Exception 4 of 300 IPC. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by First Exception. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel manner, and (d) the fight must have been with the person killed.

20. In **Virsa Singh Vs. State of Punjab AIR 1958 SC 465 & 1958 Cr.L.J. 818,** the Hon'ble Supreme Court has held that a culpable homicide is a murder under section 300 clause III. If the prosecution should establish four elements – (i) the presence of a bodily

injury, (ii) nature of such bodily injury, (iii) intention on the part of the accused to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and (iv) the injury was sufficient to cause death in the ordinary course of nature. Dealing with the question, as to how intention is to be inferred, Vivian Bose J. succinctly stated:-

> *"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. ……*
>
> *The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the*

circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question."

21. The intention which is a state of mind cannot be proved by the direct evidence as a fact it can only be inferred from the facts and circumstances of each case. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under section 302 or 304 Part-I or 304 Part-II. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a

single blow or several blows. In the present case, as noticed above, the appellant-Hari Singh was carrying a knife, a dangerous weapon. There was previous enmity between the parties. The deceased and the injured Laxman Singh were unarmed. There was no provocation. There was no indication of any cause for an apprehension on the part of the appellant Hari Singh that the deceased may attack him. The stabbing was with great force, causing three injuries on the body of the deceased, sufficient in the ordinary course of nature to cause death. Dr. Harish Chandra Pathak (PW4), the autopsy surgeon has stated that the ante-mortem injuries were sufficient to cause death of the deceased and he has further stated that the deceased could have been saved if the medical treatment would have been available in the hospital. Dr. M. D. Bhatt PW5, Medical Officer, who examined the deceased at the initial stage, had categorically stated that the injuries were sufficient to cause the death of the deceased. Even if, the death was caused due to non-availability of sufficient medical treatment immediately after the incident the accused persons cannot take the benefit of the same. The appellant-accused Hari Singh caused three successive knife blows on the body of the deceased and the injuries were caused by knife blow with such a force that there was a fracture of bone inside the injury. It is also pertinent to mention here that the appellant Hari Singh has not inflicted only a single blow but he dealt repeated blows on the person of the deceased. If he had no intention to cause death of the deceased he would not have inflicted several blows of knife on the person of the deceased. The intention of appellant Hari

Singh to cause death or at all events intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made out. The circumstances to bring the case under Exception 4 to Section 300 do not exist. Thus, we have no hesitation to hold the appellant Hari Singh guilty under section 302 IPC. We are completely in agreement with the findings recorded by the trial court with regard to the conviction of appellant Hari Singh under section 302 IPC.

22. Now, we have to consider as to whether the appellant Hari Singh is also guilty under section 307 IPC for causing injury to the injured Laxman Singh PW2. It was contended on behalf of the appellant Hari Singh that from the facts and circumstances of the case no offence under section 307 IPC is made out against the appellant Hari Singh. It was further contended that at the most even if the prosecution evidence was found credible and cogent against him the offence punishable under section 324 IPC is only made out against him. Learned GA refuted the contention. To constitute an offence under section 307 IPC two ingredients of the offence must be present: (a) an intention of or knowledge relating to commission of murder; and (b) the doing of an act towards it. For the purpose of section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening

circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or knowledge which is the necessary ingredient of section 307 IPC, there can be no offence “of attempt to murder”. Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. In the case in hand, the injured Laxman Singh PW1 has sustained only one single knife blow on his hip. The prosecution has led the evidence that Hari Singh inflicted knife blow upon the injured. Thereafter, he ran away from the place of occurrence. It is not the prosecution case that the appellant Hari Singh had given successive blows on the person of injured Laxman Singh. It is not the prosecution case that when the appellant Hari Singh was ready to give another blow on the person of Laxman Singh the witnesses intervened in the matter. Contrary to this, the prosecution has led the evidence that after giving a single blow on his person the appellant Hari Singh ran away from the place of incident. There was no intention to commit the offence under section 307 and the injury is not on the vital part of Laxman Singh. After considering the nature of the weapon used, the place where the injury was inflicted, the nature of injury and the circumstances in which the injury was caused, we are of the view that the prosecution has failed to establish that there was an intention to kill

Laxman Singh by Hari Singh. Thus, the appellant Hari Singh is not liable to be convicted under section 307 IPC. The appellant Hari Singh is liable to be convicted under section 324 IPC for causing injury to Laxman Singh PW1.

23. Now, we come back to the question as to whether the appellant Inder Singh is liable to be convicted under section 307/34 IPC or not. It has come in the evidence that Inder Singh got enraged with Laxman Singh PW1 and slapped on his face. In order to protect him, Kundal Singh(deceased) appeared there and asked Inder Singh as to why they were beating his brother. Thereafter, the appellant Hari Singh took out a knife and gave knife blows to him. Consequently, Kundal Singh fell on the ground. When Laxman Singh PW1 came forward to rescue him, the appellant Inder Singh caught hold of Laxman Singh from behind and exhorted the appellant Hari Singh to kill him. On the exhortation of Inder Singh, Hari Singh gave a knife blow on the person of Laxman Singh. Thus, the appellant Inder Singh had an intention to cause injury to Laxman Singh because he caught hold of him from behind and he exhorted to cause injury on his person. We have already held that the appellant Hari Singh is liable to be convicted under section 324 IPC for causing injury to Laxman Singh. As such, the appellant Inder Singh had a common intention. Thus, he is also liable to be convicted under section 324/34 IPC.

24. Considering the above factual backgrounds, the learned trial court was justified to convict the

appellant-Hari Singh under section 302 IPC. He is also liable to be convicted under section 324 IPC instead of section 307 IPC. So far as the appellant Inder Singh is concerned, he deserves to be acquitted from the charge under section 302/34 IPC and he is liable to be convicted under section 324/34 IPC instead of section 307/34 IPC.

25. Accordingly, the appeal is partly allowed. Consequently, the conviction and sentence under section 302 IPC awarded by the trial court against the appellant-Hari Singh are confirmed. Hari Singh is convicted under section 324 IPC instead of section 307 IPC and he is sentenced to undergo R.I. for a period of three months under section 324 IPC. The appellant Inder Singh is acquitted from the charge under section 302/34 IPC. Inder Singh is convicted under section 324/34 IPC instead of 307/34 IPC and is sentenced to undergo for three months under section 324/34 IPC. All sentences shall run concurrently. The impugned judgment and order passed by the trial court is modified accordingly.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 14th June, 2007

LSR